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representing

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before the

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Commissioners and officials of the Schwarzenegger Administration, I am pleased to appear today representing the California homebuilding industry to both applaud and register concerns about the many recommendations in the California Performance Review (CPR) dealing with resource conservation and environmental protection.

General observations

The homebuilding industry supports the Governor's efforts to consolidate and streamline state government and agrees with him that Californians deserve a government that is a partner and a performer, and not a drain on individual or collective enterprise. Though the CPR does not address all the issues lawmakers and policy-makers must face to accomplish the Governor's goal, it provides a critical framework for beginning the tough work of reforming state government.

Generally, the findings and recommendations in Chapter 5 appear to be appropriately aimed at eliminating duplicative government activities and making state agencies more responsive to the public's varied needs. The proposed consolidation of various divisions and departments certainly makes sense from a cost-cutting standpoint. This is particularly true with administrative functions of government which can be more cost-effectively handled in a centralized setting (RES 07). Similarly, consolidations such as those proposed for Cal EPA and the Resources Agency, can reduce the number of supervisors necessary to manage programs and services, saving money and promoting greater policy continuity.

In this regard, the CPR is headed in the right direction.

It should be noted, however, that the necessary and critical companions of "streamlining" and "consolidation" must be "performance" and "accountability." By this measure, the CPR is deficient. Nearly all of the recommendations contained in Chapter 5 appropriately aim at facility and one-stop shopping yet none of them describe how the new providers of government services – now moved further from the public's eye or seeking greater funding – will be measured for their performance. Nor do the recommendations describe what means will be available to the public to reasonably review the actions taken by new regulators and service providers. The recommendations of Chapter 5 – and, I'm certain, all other chapters of the CPR – need appropriate checks and balances imbedded in the proposed consolidation and efficiency reforms.

In addition, the Chapter lacks an organizing principle to support its myriad and many recommendations. Indeed, while it's likely that as California citizens, all of us stakeholders – developers, environmentalists, local elected officials and public servants – are in agreement on the role of state government in protecting and preserving the environment, it's not clear what is to guide the new regulatory regime that the CPR proposes. What should determine a sound environmental policy for California? One that enacts robust environmental laws and policies that are supported by thorough and unambiguous science then, through state agencies, uses that science to establish and conduct balanced and effective regulatory policies.

Finally, I'd like to observe that there is a reason for the "fragmented and fractured governmental structure and regulatory schemes" and the "quilt of departments, boards, commissions and offices administering scores of programs" that the authors of Chapter 5 rightfully malign in the Chapter's introduction. The reason is the "fragmented and fractured" laws and regulations that have gone unchecked for decades and, regrettably, are not addressed by the CPR. Setting aside the concerns that I, representing the homebuilding industry, have about this serious defect in the report, a fair argument could be made that the explicit management and service reforms imbedded in the CPR will never be accomplished until the mess of state environmental laws and policies is cleaned up.

CPR recommendations – comments

There are many recommendations about which the homebuilding industry has comments that, particularly considering the limited time today, I will allow the industry's state association – CBIA – to submit in detail and in written form. But, I do want to make some principled comments that may impact a few of the 35 specific recommendations.

First, consolidations that involve administrative functions can certainly save money and better serve both beneficiaries of government programs and program administrators, alike. We enthusiastically support them and encourage the Governor to move forward.

Second, again, environmental lawmaking and regulation must always be based on science. Some of the efficiency recommendations of the CPR – like RES 31, which deals with mitigation standards – propose "uniform" state regulation. While those recommendations sound reasonable, they implicitly abandon the principle of science-based environmental policy-making and negate any value that "uniformity" may provide.

Finally, at least one of the recommendations – RES 32 – proposes that regulatory fees that are now collected by the state be used for a wider array of environmental objectives. This proposal contradicts the well-established "nexus" policy associated with governmental fees and any departure from this long-standing policy would meet with strong resistance from the homebuilding industry.

Other recommendations

With the little time I have remaining, let me enunciate one of the general observations I've made about CPR today: that the monumental undertaking of CPR is likely to have only limited success if nothing is done to amend or reconfigure the myriad state laws that drive the regulatory problems that the CPR report laments.

In my 17 years or practicing land-use law much of my time has been spent dealing with redundant, duplicative and parallel governmental-approval procedures. As the CPR report suggests, some of these inefficiencies can be eliminated through structural and organizational change. But, as long as multiple regulatory entities (at the regional and local levels as well as the state level) – whose origins are state law – can intervene at different points of the project-approval process or impose those varied and varying parallel procedures, the CPR's proposed reforms will produce little improvement in how government conducts itself today. And, closeting those entities in new state agencies won't be worth the hassle. CPR needs to attack the source of California's regulatory problems: state laws.

This is not to attack the purpose or even the construct of well-intended laws like the California Environmental Quality Act (CEQA). But, if CPR is unhappy with both governmental-management and service-delivery problems associated with statutes like CEQA, then a more thorough review of these laws is in order. CPR should determine whether these laws are producing the outcomes and serving the public policy purpose they were originally intended to accomplish.

CPR should, for example, examine how laws like CEQA are abused in settings and which support outcomes that were never envisioned by the law's framers. I would argue that abuses of CEQA today are now serving environmentally unrecognizable purposes all over the state, particularly when it comes to housing approvals.

As you know, CEQA guides local decision-making bodies both on how to judge the impact that projects will have on the environment and how those impacts should be handled. But, more and more, as the following illustrations show, opponents of housing are using CEQA to pre-empt local agencies, override community interests (like housing) and set new environmental policies by way of the courts.

CASE I: *Citizens for Responsible Development in West Hollywood v. City of West Hollywood*

The project, a 40-unit housing project in West Hollywood, was intended to provide low-income housing for persons with AIDS. In a city where 51 percent of renters pay over 30 percent of their income in rent and over one-quarter of renters pay more than 50 percent, affordable housing is a huge concern. This particular project, with its targeted benefit to AIDS sufferers, was popular with the City Council and the public funding agencies participating in its development.

After being approved by the City, a neighborhood opposition group used CEQA to challenge the development of the project in court, contending the City was required to proceed with an environmental review rather than accepting a CEQA-authorized mitigated negative declaration to address the project's impacts on the historic structures in the community.

Ultimately, the Court decided in favor of the project and exposed the lawsuit as being unnecessary and arguably frivolous. But, damage was done: the lawsuit added one and one-half years to the project-approval process and tens of thousands of dollars to the cost of this infill project.

CASE II: *Park Area Neighbors v. Town of Fairfax*

Innovative Housing, Inc., a non-profit entity that promotes affordable housing in mixed-income neighborhoods, sought to build a high-density housing development in the Town of Fairfax. Fairfax is located in Marin County where, at the time of the project proposal in 1992, the median-priced home exceeded $500,000, offering virtually no affordable housing options for working families.

Park Area Neighbors (PAN) used CEQA to oppose the project on the grounds that the neighborhood was already too dense to accommodate anything other than single-family residences or duplexes.

The case went to an appellate court which ruled against PAN, but not before the litigation added two and one-half years of delay and, again, substantial additional costs to the project. Those expenses went directly into the cost of the housing, imposing an ever-greater housing affordability burden on the community and increasing the probability that working families would be excluded from living there.

CASE III: *Skip Baldwin v. City of Los Angeles*

Habitat for Humanity, a non-profit that helps low-income families become homeowners, proposed an owner-occupied affordable housing project comprised of duplexes in the Los Angeles community of Long Beach. The Los Angeles metropolitan area has a dismal homeownership rate of 48 percent – well below the national average of 68 percent.

Neighbors objected to the CEQA-authorized negative declaration and demanded additional environmental reviews. Although the Court of Appeal decided in favor of Habitat for Humanity, the decision came six years after the project was proposed and three and one-half years after the original, community-approved CEQA document was completed. One wonders where the families-in-waiting went to find housing while this abuse of California's premier environmental law ran its legal – or "illegal" – course.

Conclusion

Commissioners, California has the shared interest of meeting the basic needs of its citizens and protecting its environment. I believe those goals are compatible. Indeed, the examples just given of how the state's environmental laws were abused were not only going to help people in need of housing but, because they were in existing urban areas, were likely to help the state meet its environmental goals. Indeed, the projects should have been CEQA models, not CEQA victims.

All of this occurs while California is home to the highest-cost housing in the nation, with the lowest affordability, the second-lowest homeownership rate and an ongoing, unmet need for new housing supply. There's not a community in the state that doesn't need more housing.

Yet, these and countless other examples show that one public policy – supported by state law – is being allowed to work against another in a profound way. It's time for a change.

California homebuilders commend the Governor for taking the important step towards governmental reform that the CPR represents. At the same time, however, homebuilders encourage him and all lawmakers and policy-makers throughout the state to take the additional and necessary steps to make the Governor's vision of an efficient, effective and responsive state government something we can all recognize and enjoy.

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